

REMARKS

Interview

Applicant thanks the Examiner for the courtesy extended to Applicant's representative during the telephone conversation on February 16, 2010. The amendments and remarks in this response memorialize the topics discussed during the interview.

Status of the Claims

Claims 1, 3, 5-8 and 12-23 are pending. Claims 2 and 4 were previously canceled and claims 9-11 are, by this amendment, canceled without prejudice or disclaimer. Claims 1 and 3 are independent.

In the final Office Action, claims 1 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Takayasu (U.S. Patent Appl. Publ. No. 2001/0025265) in view of Calo et al. (U.S. Patent Appl. Publ. No. 2002/0087454). Further, claims 5-8 and 12-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Takayasu in view of Calo and Tsagarakis et al. (U.S. Patent Appl. Publ. No. 2002/0087455).

§ 103(a) Rejection of Independent Claims 1 and 3

The rejection of independent claims 1 and 3 should be withdrawn because the final Office Action fails to establish a prima facie case of obviousness. The final Office Action acknowledges that Takayasu fails to disclose or suggest, among other things, "establishing the foreign currency as a stock on a stock exchange, wherein the stock comprises a number of units of the foreign currency offered for trade in terms of a native currency of the stock exchange." (Final Office Action at 3.) In an attempt to cure this

acknowledged deficiency, the Office Action relies on Calo, citing pg. 2, col. 2, para. [0030] - page 3, col. 1, line 47. *Id.*

Calo teaches a procedure for performing a completely different transaction than that which is claimed in the present application. The claims of the present application set forth aspects of a transaction whereby a party is able to exchange one currency for another currency (e.g., exchange U.S. dollars for Japanese Yen) using a stock exchange. Rather than requesting a currency exchange at a financial institution like a bank, an embodiment described in the present application proposes establishing or listing one or more shares of a stock on a stock exchange where each share of the stock comprises a number of units of a foreign currency which are offered for purchase in terms of a different currency, such as the native currency of the stock exchange. Such shares of a stock could be purchased by a party in order to exchange, for instance, native currency for foreign currency without using a bank. For example, as explained in the last full paragraph of page 6 of Applicant's specification, if the exchange rate is approximately \$12.00 USD = 1000 Yen, then one share of an exchange stock on a U.S. stock exchange could be worth 1000 Yen and sell for about \$12.00 USD. Therefore, anyone wishing to convert \$12.00 USD to 1000 Yen could simply purchase one share of the exchange stock using their \$12.00 USD.

In contrast, Calo teaches a method for a buyer in one country to purchase shares of a commodity (e.g., shares of IBM stock; see Calo para [0030]) on a stock exchange in a foreign country that uses a different currency. For example, Calo describes, in paragraphs [0031] and [0032], an "example of an Australian customer buying U.S. stocks." In contrast, the present claims specify that the commodity established as a

stock is the foreign currency itself and that one currency is offered for trade in terms of a different currency.

Further, in Calo, the transaction involves a conventional financial institution called a "global foreign exchange liquidity bank" to first exchange a buyer's Australian dollars for U.S. dollars. Para. [0032]. Then, the U.S. stock is purchased on the U.S. stock market with U.S. dollars obtained from the exchange bank. *Id.*

Thus, Calo fails to disclose or suggest

establishing the foreign currency as one or more exchange shares of stock on a stock exchange, wherein each of the one or more exchange shares of the stock comprises one or more units of the foreign currency offered for trade in terms of a native currency of the stock exchange

as recited in independent claim 1. Similarly, Calo also fails to disclose or suggest

establishing the foreign currency as one or more exchange shares of stock on a stock exchange, wherein each of the one or more exchange shares of the stock comprises one or more units of the foreign currency offered for trade in terms of a currency different than the foreign currency

as recited in independent claim 3. The only stocks involved in the Calo transaction are standard U.S. stocks. The currency exchange in Calo does not occur via a stock market, but rather at a separate, conventional "exchange liquidity bank." Therefore, Calo does not disclose or suggest "establishing the foreign currency as one or more exchange shares of stock on a stock exchange . . . , " as recited in independent claims 1 and 3.

For at least the foregoing reasons, the cited art fails to disclose or suggest all of the recited features of independent claims 1 and 3 and, accordingly, the § 103(a) rejection of these claims should be withdrawn.

Rejection of Dependent Claims Under § 103(a)

The final Office Action acknowledges that the proposed combination of Takayasu and Calo fails to disclose or suggest various features of the dependent claims. In an attempt to cure these acknowledged deficiencies of Takayasu and Calo, the final Office Action relies on Tsagarakis for alleged teachings of the features acknowledged to be lacking in Takayasu and Calo. Applicant respectfully submits, however, that Tsagarakis fails to cure the deficiencies of Takayasu and Calo with respect to independent claims 1 and 3. Since each dependent claim ultimately depends from either independent claim 1 or independent claim 3, the rejection of the dependent claims should fail for at least the same reasons that the rejection of the independent claims is legally insufficient.

Stock Names

In the Office Action, with respect to claims 13, 15, 17, 19, 21, and 23, the stock names of USJP, USEU, USCA, were considered not to exist except in Applicant's specification, and furthermore to be nonfunctional descriptive claim language. (Final Office Action at 5 and 6.) Applicant addressed this issue in Applicant's previous response. The final Office Action includes the exact same allegations as the previous Office Action with respect to this issue. However, the final Office Action does not respond to Applicant's comments regarding these allegations, nor does the final Office Action provide any further comment regarding this issue. Applicant continues to disagree with the Examiner's treatment of the claimed stock names for at least the following reasons.

Applicant respectfully submits that these stock names are examples of a system of nomenclature conceived by Applicant and expressed in the present application.

These stock names follow a convention wherein the first two letters are the two-letter abbreviation of the country whose currency the stock is priced in terms of, and the second two letters are the two-letter abbreviation of the country whose currency the stock represents. See, e.g., Applicant's specification at page 7. For example, a stock name of USCA would be given to a stock that represents a predetermined amount of Canadian dollars in terms of U.S. dollars. *Id.* Thus, purchasing USCA would effectively exchange U.S. dollars for Canadian dollars.

The names are derived from the ISO standard for country name abbreviations. With this naming system, the currency being used to make the purchase comes first, using the two character ISO country code for the country whose currency is being used to make the purchase. The currency being sold comes second, using the two-character ISO country code for the country whose currency is being purchased. Quotes for selling U.S. Dollars/buying Canadian Dollars is often confusing to investors. Using Applicant's system of nomenclature, however, the symbols USCA and CAUS cannot be easily confused.

Using this system, an investor could easily know, without having to consult a lengthy table of stock symbols, a look up table, or a look up utility, what symbol he/she would use to find a quote in the market or stock exchange for foreign currency stock which is listed as one or more exchange shares. Even with only just the top 20 currencies, there are 400 unique "cross-pairs" that would be required and hence a table would be less useful than a naming system that was intuitively understood by investors. Current stock exchange infrastructure supports 4 letter stock symbols and, therefore,

Applicant's system of nomenclature does not require any infrastructure changes to existing stock exchanges in order to be implemented.

For at least the foregoing reasons, Applicant respectfully submits that the recited stock names in claims 13, 15, 17, 19, 21, and 23 should not be considered to be merely nonfunctional descriptive language.

Examiner's Response to Arguments

In the final Office Action, the Examiner argues that Calo discloses establishing foreign currency as a stock on a stock exchange, citing paragraph [0026] in Calo, which states that “[t]he system of Fig. 1 allows a customer in any first country with a local affiliate to purchase or sell a stock or other financial instrument that is traded on an exchange in a second country.” (Final Office Action at 8.)

First the Examiner indicates that “[a] financial instrument [as used in Calo's para. 0026] is interpreted as being a currency that can be traded on a Global hub that interfaces with a Foreign Exchange (FX). Page 4, para. 0036.” *Id.* Applicant, however, claims a new type of tradable security, i.e., stock exchange-listed, foreign exchange shares. There is no teaching or suggestion in Calo that the recited “financial instruments” in paragraph [0026] are contemplated to encompass the unique type of tradable security claimed by Applicant. Accordingly, Calo does not disclose or suggest establishing shares of stock in a manner that meets all the limitations recited in Applicant's independent claims 1 and 3.

The Examiner also asserts that “it is unclear what establishing a foreign currency as a stock on a stock exchange entails from reading the Specification.” (Final Office Action at 8.) Applicant respectfully submits that the meaning of this claimed feature was

explained in detail (along with references to Applicant's specification) in Applicant's previous response, and is discussed above once again. In addition, Applicant includes further discussion regarding this issue below.

In the foreign exchange markets there are three types of markets that investors or speculators may use to invest in foreign currency: the cash market, options markets, and futures markets. The present invention combines the features of shares with the features of the cash market for foreign exchange to create a new type of security, stock exchange-listed foreign exchange shares. Applicant's foreign exchange shares provide a method, not previously available, for investors to invest directly, via a security, in the cash market for foreign exchange.

The Examiner inquires about the establishment of the foreign currency as a stock, asking, “[i]s the foreign currency established on a stock exchange as discussed in the NPL Reference by Pasmantier, Anita B. entitled ‘Currency Options: From Inception to Present’ on page 3, para. 4-Page 4, para. 5 and Page 5, para. 1 and para. 4?” *Id.* The “currency options” discussed in the Pasmantier article are a different type of tradable security than the exchange shares recited in Applicant’s claims. Specifically, Applicant’s claimed exchange shares of stock are anticipated to be highly liquid because, being shares, they are readily convertible, at all times, into fungible currency, and are substantially similar to what is traded in over \$3 trillion dollars per day in the cash market for foreign exchange. (See

http://en.wikipedia.org/wiki/Foreign_exchange_market). In contrast, the currency options discussed by Pasmantier are neither stocks nor cash market equivalents, but rather purely stock derivatives and cash market derivatives. Unlike stock shares, stock

derivatives, such as options and futures, like those described in Pasmantier, are settled in a forward market, and thus, are not immediately exchangeable for the underlying shares or cash equivalent, nor are they as liquid as shares of stock listed on a stock exchange.

Furthermore, a foreign currency option, as described by Pasmantier, is not a unit or "share" of foreign currency that may be purchased, but rather, is only a derivative whose value is determined based on changes in value of the foreign currency. In addition, the Philadelphia Stock Exchange foreign currency options described in the Pasmantier article are quoted in terms of U.S. currency, not the foreign currency. Pasmantier at 4. Those options settle in U.S. dollars and no delivery or receipt of foreign currency ever occurs.

[Http://www.nasdaqtrader.com/Micro.aspx?id=phlxwcofaqs](http://www.nasdaqtrader.com/Micro.aspx?id=phlxwcofaqs).

Foreign currency options are investment mechanisms that are based on the concept that, if an investor were to exchange a certain amount of native currency for a corresponding amount of foreign currency, and then exchange it back in the future when the exchange rate has changed favorably, the investor would get back more native currency than the amount originally exchanged. Foreign currency options do not actually execute this procedure, however. In fact, no actual exchange of foreign currency takes place at any time during the life of a foreign currency option contract. Foreign currency options are merely based on exchange rates, and values of such options are calculated as if an exchange had occurred, even though one never actually does.

In the case of the Philadelphia Stock Exchange foreign currency options described in the Pasmantier article, the change in the exchange rate is referenced only on fixed settlement days, which only occur once per month. In contrast, the stock exchange-listed foreign exchange shares may be exchanged by an investor for the underlying currency on any day of the month, at any time, to obtain the foreign currency in cash.

Thus, foreign currency options, which are highly complex and difficult to understand, are for insuring and speculating against changes in foreign exchange rates only, and do not provide a mechanism for actually exchanging one currency for another, as do Applicant's claimed exchange shares. Applicant's exchange shares enable a new class of investment vehicle which is easily understood (i.e., the investment in foreign exchange currency itself), without leverage or margin, through a stock brokerage account. Moreover, Applicant's exchange shares have much less risk than investment in futures or options (both of which employ large amounts of leverage) and, therefore, are more appropriate and suitable for a wider array of potential investors and business entities.

Pasmantier also mentions the Chicago Mercantile Exchange's options wherein the underlying assets are futures contracts. Pasmantier at 4. As noted above, futures are one of the three existing foreign exchange market types, the others being the cash market and options market. Futures contracts function similarly to options contracts. Being a fundamentally different type of security and market type, currency futures do not constitute exchange shares of stock as required by Applicant's independent claims 1 and 3.

Further, Pasmantier mentions Over the Counter Options. *Id.* Pasmantier explains that these are not traded on any organized exchange. *Id.* Therefore, these do not satisfy the requirement of “establishing the foreign currency as one or more exchange shares of stock on a stock exchange,” as required by independent claims 1 and 3.

Finally, the Examiner alleges that “it is well-known that a currency has units of a foreign currency when being traded on a stock exchange.” (Final Office Action at 8.) However, the Examiner provides no evidence to support this allegation. To the extent the Examiner is relying on the Pasmantier article as evidence purportedly supporting this allegation, Applicant respectfully submits that none of the options discussed by Pasmantier satisfy the requirement of “establishing the foreign currency as one or more exchange shares of stock on a stock exchange,” as recited in independent claims 1 and 3.

Conclusion

Applicant respectfully submits that each of independent claims 1 and 3 is allowable over the cited art. In addition, each of dependent claims 5-8 and 12-23 depends from one of independent claims 1 and 3. Accordingly, each of these dependent claims is allowable for at least the same reasons that the independent claim from which it respectively depends is allowable.

In view of the foregoing remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of claims 1, 3, 5-8, and 12-23.

Applicant invites the Examiner to contact Applicant's undersigned representative, Jeremy Thissell, at (571) 203-2717, if the Examiner believes a conversation would facilitate examination.

The Office Action contains characterizations and conclusions regarding the related art and Applicant's claims with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any such characterizations and conclusions.

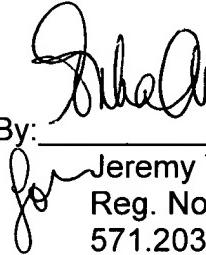
Please grant any additional extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 9, 2010

By: _____


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